

**ASSET PURCHASE AGREEMENT**

**THIS AGREEMENT** is made and entered into as of the 31<sup>st</sup> day of OCTOBER, 2003, by and between the **Village of Saunemin** ("Seller") and **Illinois-American Water Company** ("Purchaser").

**WITNESSETH:**

**WHEREAS**, Seller is an Illinois municipal corporation and a political subdivision of the State of Illinois which provides potable water service to its residents and certain individual customers outside its corporate boundaries in Livingston County, Illinois ("Seller's Business"); and

**WHEREAS**, Purchaser is an Illinois corporation and a regulated public utility providing potable water service to residents within, inter alia, Livingston County, Illinois; and

**WHEREAS**, Seller desires to sell and Purchaser desires to purchase Seller's Business (including a perpetual franchise to operate such business within the Seller's corporate boundaries) and certain assets of Seller, all pursuant to the terms and conditions set forth herein;

**NOW, THEREFORE**, for and in consideration of the mutual covenants and agreements contained herein, the parties hereby agree as follows:

**ARTICLE I**

**SALE OF ASSETS**

**A. Assets Acquired.** Upon and subject to the conditions set forth in this Agreement, Seller agrees to sell, convey, transfer, assign, and deliver, or cause to be sold, conveyed, transferred, assigned, and delivered to Purchaser, and Purchaser agrees to purchase, Seller's Business and all the physical plant, property, equipment, and facilities, whether real, personal, or mixed, comprising the water system of Seller or useful to it in supplying water to the public in Livingston County, Illinois (excluding all unreserved cash and accounts receivable), legally or beneficially owned by Seller on the Closing Date, wheresoever located, whether carried on the books of Seller or not carried on the books of Seller due to having been expensed, fully depreciated, fully amortized or otherwise (collectively, the "Water Properties"), including, but not limited to, the following:

- (1) All land, interests in land, structures, appurtenances, and improvements.
- (2) All pumping equipment.
- (3) All distribution structures and equipment including elevated tank(s), mains, services, meters, and hydrants.

- (4) All goodwill and customer lists and accounts.
- (5) All contracts, whether written or oral, assumed by Purchaser.
- (6) All inventories, raw materials, components, repair parts, work in process, and similar items, whether new or used, specifically including, but not limited to, all mains, pipe, hydrants, meters, valves, and service lines not yet installed and all chemicals required or useful to the upkeep of the water properties or the rendering of water utility service.
- (7) All of Seller's rights, claims, and choses in action against third parties which are related to the assets described in subsections (1) through (6) of this Section A.
- (8) All rights in, to, and under all warranties and representations related to the assets described in subsections (1) through (7) of this Section A.
- (9) All records relating to Seller's water utility business, including, but not limited to, all supplier lists, parts lists, manuals, files, computer programs, and any similar items related to the conduct of Seller's Business and the assets described in subsections (1) through (8) of this Section A.
- (10) Up to \$3,000 of accounts receivable which remain outstanding for more than sixty (60) days after Seller has issued its final bills for water service. Purchaser shall pay Seller fifty cents on each dollar for such outstanding receivables, to a maximum of \$1,500. Should more than \$3,000 in accounts receivable remain outstanding, Seller shall retain those which have remained past due the longest.

**B. Assets Not Acquired.** Notwithstanding Section A, Purchaser shall not acquire Seller's unreserved cash nor refundable customer deposits. Unreserved cash shall be that which is not a customer refundable deposit. Customer refundable deposits shall be returned by Seller to the customers, within sixty (60) days following the Closing as hereinafter defined.

**C. Non-Assumption of Obligations or Liabilities.** Purchaser expressly does not assume and does not agree to assume any obligation or liability of Seller, direct or indirect, known or unknown, choate or inchoate, absolute or contingent.

## **ARTICLE II**

### **PURCHASE PRICE**

**A.     Amount.** The aggregate cash purchase price (the "Purchase Price") to be paid by Purchaser to Seller in consideration for the Water Properties and Seller's performance hereunder shall be Three Hundred Ten Thousand Dollars (\$310,000.00), plus the cost of accounts receivable as determined by ARTICLE I, Section A.10, and less the cost to repair the tile in accordance with ARTICLE III, Section T. Seller and Purchaser agree that, for federal income tax purposes, said Purchase Price, without deduction for the tile repair, shall be allocated among the Water Properties as shown on attached Schedule 1. In addition, upon close of the transaction contemplated hereby, Purchaser shall forgive and waive the service fee which has accrued for services provided to the Seller by the Purchaser in the amount of \$2,000 per month, for a five-month period, being an aggregate waiver of \$10,000. Should the transaction not close for any reason, Purchaser reserves the right to collect such amount from Seller.

**B.     How Paid.** The amount which is required to satisfy the indebtedness owed by Seller to the State Bank of Saunemin ("Bank") shall be paid, by wire transfer or company check, to Bank, at the Closing. The balance of the Purchase Price, other than that for receivables and less prorations, and the cost to repair the tile in accordance with ARTICLE III, Section T shall be paid, by cash, wire transfer, or Company check, to Seller at the Closing. The amount for receivables shall be paid by Company check when such receivables are transferred to Purchaser.

## **ARTICLE III**

### **WARRANTIES, REPRESENTATIONS, AND COVENANTS OF SELLER**

As an inducement to Purchaser to enter into this Agreement and to consummate the transactions contemplated hereby, Seller represents, warrants, and covenants to and with Purchaser that:

**A.     Organization and Power.** Seller is a municipal corporation duly organized, validly existing, and in good standing under the laws of the State of Illinois. Seller has all requisite corporate and statutory power and authority to own and operate the Water Properties and to carry on Seller's Business as it is now being conducted and to enter into this Agreement and all other agreements and documents contemplated hereby, without requirement of referendum or approval from any third party.

**B.     Authority.** The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby have been duly and validly authorized by all necessary action on the part of the Village Council of Seller. This Agreement and the other agreements and documents contemplated hereby are valid and binding obligations of Seller, enforceable against Seller in accordance with their respective terms and conditions. Neither the execution and delivery of this Agreement nor the consummation of the transactions contemplated hereby, nor compliance by Seller with any of the provisions hereof, will (i) conflict with or result in a breach of any provision of the Articles of Incorporation or Ordinances of Seller, or result in a default (or give rise

to any right of termination, cancellation, or acceleration) under any of the terms, conditions, or provisions of any note, lien, bond, mortgage, indenture, license, lease, agreement, consent order, or other instrument or obligation to which Seller is a party, or by which Seller or any of the Water Properties may be bound; or (ii) violate any judgment, order, writ, injunction, or decree of any court, administrative agency, or governmental body applicable to Seller or any of the Water Properties; or (iii) cause, or give any person grounds to cause (with or without notice, the passage of time, or both), the maturity of any liability or obligation of Seller to be accelerated or increased. All consents and approvals of third parties or governmental authorities required in connection with the execution and delivery by Seller of this Agreement and the consummation by Seller of the transactions contemplated hereby, except for the approval of the Illinois Commerce Commission, have been obtained. Seller will cooperate fully with Purchaser in obtaining approval from the Illinois Commerce Commission of this Agreement and the transaction contemplated hereby as expeditiously as possible following the execution hereof.

**C. Financial Statements.** Seller has delivered to Purchaser copies of the most recent audited financial statements prepared of Seller's Business and of the most recent interim, unaudited financial statements prepared by Seller (collectively, the "Financial Statements"), all of which are true, complete, and correct, have been prepared from the respective books and records of Seller in accordance with generally accepted accounting principles consistently applied and maintained, in accordance with applicable regulation, throughout the periods indicated, and fairly present the respective financial conditions of Seller's Business as at their respective dates and the results of its operations for the periods covered thereby. Such Financial Statements do not contain any items of special or nonrecurring income or any other income not earned in the ordinary course of Seller's Business and consistent with the applicable industry standards and practices.

**D. Absence of Undisclosed Liabilities.** Except as and to the extent reflected or reserved against on or in the Financial Statements (including the Notes thereto), as of the date hereof, Seller has no debts, liabilities, or obligations (whether absolute, accrued, contingent, or otherwise) of any nature whatsoever relating to or arising out of any act, transaction, circumstance, or state of facts, in connection with or related to Seller's Business. All reserves established by Seller and set forth on the Financial Statements are and will be adequate. Seller has no loss contingencies (as such term is used in Paragraph 5 of the American Bar Association Policy Regarding Lawyer's Response to Auditors' Requests for Information (December 1975)) which are not adequately provided for in the Financial Statements (excluding the Notes thereto).

**E. Tax Matters.** Seller, as a municipal corporation and a political subdivision of the State of Illinois, is exempt from payment of income, sales, and use taxes arising out of the operation of Seller's Business and the transactions contemplated hereunder. The Seller is also exempt from payment of any ad valorem taxes and assessments against or in respect of the Water Properties to be purchased hereunder. To the extent that Seller is not so exempt from taxation, Seller represents and warrants to Purchaser that all taxes, including, without limitation, income, property, public utility, sales, use, franchise, value added, and employees' income withholding and social security taxes imposed by the United States, by any state, municipality, subdivision, or instrumentality of the United States, or by any other domestic or foreign taxing authority, which are due and payable by Seller, and all interest and penalties thereon, have been paid in full. Seller has, and at the Closing

Date will have, filed all federal, state, county, local, foreign, and other tax returns which are required to be filed, on or before the dates of which such returns are required to be filed. All such returns of Seller, if any, are true, correct, and complete in all respects and reflect accurately all income, deductions, credits, and liability for taxes of Seller. Any federal, state, or local conveyance, sale, or transfer taxes owing on account of the transfer of the Water Properties to Purchaser shall be paid by Seller. All real property taxes, if any, shall be pro rated between Seller and Purchaser as of the Closing Date.

**F. Absence of Changes or Events.** Since the date of the most recent balance sheet contained in the Financial Statements, Seller's Business has been conducted only in the ordinary course and Seller has not:

(1) incurred any obligation or liability, absolute, accrued, contingent, or otherwise, whether due or to become due, except current liabilities for trade payables incurred in the ordinary course of business and consistent with its prior practices, none of which liabilities, in any case or in the aggregate, adversely affects its business, liabilities or financial condition;

(2) discharged or satisfied any lien, charge, or encumbrance other than those then required to be discharged or satisfied, or paid any obligation or liability, absolute, accrued, contingent or otherwise, whether due or to become due, other than current liabilities shown on the most recent balance sheet contained in the Financial Statements in the ordinary course of business and consistent with its prior practice;

(3) mortgaged, pledged, or subjected to lien, charge, security interest, or any other encumbrance or restriction any of the Water Properties;

(4) sold, transferred, leased to others, or otherwise disposed of any of its assets, except for inventory sold in the ordinary course of business, or canceled or compromised any debt or claim, or waived or released any right of substantial value;

(5) received any notice of termination of any contract or other agreement, or suffered any damage, destruction, or loss (whether or not covered by insurance) which, in any case or in the aggregate, has had an adverse effect on the Water Properties or the operation or prospects of Seller's Business;

(6) had any material change in its relations with its customers or suppliers;

(7) instituted, settled, or agreed to settle any litigation, action, or proceeding before any court or governmental body relating to Seller's Business or the Water Properties;

(8) failed to replenish its inventories and supplies in a normal and customary manner consistent with its prior practices and prudent business practices prevailing in its industry, or made any purchase commitment in excess of the normal, ordinary, and usual requirements of its business or at any price in excess of the then current market price or upon terms and conditions more onerous than those usual and customary in its industry, or made any change in its selling, pricing, or

advertising practices inconsistent with its prior practices and prudent business practices prevailing in its industry;

(9) suffered any change, event, or condition which, in any case, or in the aggregate, has had or may have a materially adverse affect on Seller's Business (financial or otherwise), including, without limitation, any change in its revenues, costs, backlog, or relations with its customers or suppliers;

(10) entered into any transaction, contract, or commitment other than in the ordinary course of business or paid or agreed to pay any fees or other expenses in connection with, or by reason of, this Agreement or the transactions contemplated hereby; or

(11) entered into any agreement or made any commitment to take any of the types of actions described in subsections (1) through (10) of this Section F.

**G. Compliance with Laws; No Default or Litigation.**

(1) Seller is not in default or in violation in any respect under any contract, agreement, lease, consent, or other written commitment or instrument to which it is a party, or under any law, rule, regulation, writ, injunction, order, or decree of any court or any federal, state, local, or other governmental department, commission, board, bureau, agency, or instrumentality (including, without limitation, applicable laws, rules and regulations relating to environmental protection or public water supplies), and Seller has operated and is now operating Seller's Business in compliance with all applicable laws, rules, regulations, and applicable industry standards and practices.

(2) There are no actions, suits, claims, investigations, or legal, arbitration, or administrative proceedings in progress, pending or, to the knowledge of Seller, threatened against Seller or involving any of the Water Properties, whether at law or in equity, whether civil or criminal in nature, or whether before or by a federal, state, municipal or other governmental department, commission, board, bureau, agency, or instrumentality, domestic or foreign. Seller has not received any notice of any violation of any rule, regulation, ordinance, law, order, decree, or requirement relating to Seller's Business, the Water Properties, or the transaction contemplated by this Agreement; and Seller does not know or have reason to be aware of any basis for the same.

(3) No action, suit, or proceeding has been instituted or, to the knowledge of Seller, threatened to restrain or prohibit or otherwise challenge the legality or validity of the transaction contemplated hereby.

(4) Seller is not aware of any proposed laws, rules, regulations, ordinances, orders, judgments, decrees, governmental takings, condemnations, or other proceedings which would adversely affect Seller's Business or the Water Properties, either before or after the Closing.

**H. Contracts.**

(1) The agreements referenced on Schedule 2 attached hereto include all oral or written contracts, purchase orders, and work orders, including all amendments thereto, to which Seller is a party or is bound and which relate to or are in any manner connected with Seller's Business or the Water Properties ("Contracts").

(2) All the Contracts are valid and binding obligations of the respective parties thereof, enforceable in accordance with their respective terms, in full force and effect, and validly assignable to Purchaser without the consent of any other party.

**I. Licenses and Permits.**

(1) Seller possesses all franchises, licenses, permits, certificates, approvals, and other authorizations necessary to own and operate the Water Properties and to conduct Seller's Business as now conducted (the "Permits") and Schedule 3 contains a full and complete list of the Permits.

(2) Seller has fulfilled and performed its obligations under each of the Permits, and no event has occurred or condition or state of facts exists which constitutes or, after notice or lapse of time or both, would constitute a breach or default under any of the Permits or, after notice or lapse of time or both, would permit revocation or termination of any of the Permits, or which might adversely affect the rights of Seller under any of the Permits. Each of the Permits is valid, subsisting, and in full force and effect and may be assigned and transferred to Purchaser in accordance with this Agreement without the consent or approval of any third party, except the Illinois Commerce Commission.

**J. Title to Water Properties and Related Matters.**

(1) Seller has good, marketable, and insurable title to all the Water Properties, free and clear of all mortgages, liens, pledges, charges, security interests, encumbrances, easements, encroachments, rights of third parties, or other interests of any kind or character, except those which will be satisfied in full and released contemporaneously with the Closing. The Water Properties include all personal and real properties and assets, tangible and intangible, and all licenses, contracts and other agreements necessary to permit Purchaser to carry on Seller's Business subsequent to the Closing Date in the same manner as presently conducted by Seller, after receipt of approval from the Illinois Commerce Commission, and, except for inventories used in the ordinary course of Seller's Business, the Water Properties include all of the assets and properties used by Seller in the past twelve (12) months in the conduct of Seller's Business.

(2) Within thirty (30) days following the execution hereof, Seller will furnish to Purchaser, free of charge, title policies showing merchantable title, free and clear of all liens and encumbrances (except taxes and special assessments, if any, due and payable on or after the Closing Date (as hereinafter defined)), to any and all real estate constituting a part of the Water Properties. If, upon examination of such title policies, any material defects are found with respect to the title to any of the Water Properties which the Seller is unable to remedy by the Closing Date, the Purchase Price shall be reduced by the cost of clearing or removing such defect, as shall be determined by the

mutual agreement of Purchaser and Seller or, upon the failure to reach such agreement, Purchaser shall have the option to terminate this Agreement.

**K. Location of Water Properties.** The tangible Water Properties are all located and situated within and upon property owned by Seller or with respect to which Seller has an easement or other right, title, or interest which it is empowered to convey or assign hereunder and which are included in Schedule 2, or upon dedicated public rights of way to which Purchaser has access and shall continue to have access following the Closing.

**L. Condition of Water Properties.** As of the date hereof, the Water Properties are in the same operational condition, reasonable wear and tear excepted, as existed at the last inspection by Purchaser.

**M. Additions.** Schedule 4 contains a complete and accurate list of all additions to the Water Properties which have been made between May 12, 2003 and the date of execution hereof along with the cost of each such addition and will be updated to and as of the Closing Date.

**N. Suppliers and Customers.** The relationship of Seller with its respective suppliers and customers is good and there is no indication of any intention to terminate or modify any such relationship by any of its respective suppliers or customers, except for Seller's supply agreement with Purchaser. To the best of Seller's knowledge, the termination of any existing contract or arrangement to which Seller is a party will not have a material adverse affect on any customer relationship.

**O. Brokers' or Finders' Fees.** No agent, broker, investment banker, person, or firm acting on behalf of Seller, its Mayor or Aldermen, or under the authority of any of them, is or will be entitled to any broker's or finder's fee or any other commission or similar fee directly or indirectly from any of the parties hereto in connection with any of the transactions contemplated hereby.

**P. Business Generally.** There have been no events or transactions or information which have come to the attention of Seller's Mayor and Aldermen which could be reasonably expected to have material adverse affect on Seller's Business or the Water Properties.

**Q. Disclosure.** No representation or warranty by Seller contained in this Agreement and no statement by Seller contained in any certificate or other instrument delivered or to be delivered herewith or in connection with the transaction contemplated hereby contains or will contain any untrue statement of a material fact or omits or will omit to state a material fact necessary in order to make the statements contained herein or therein not misleading.

**R. Cessation of Water Service Business.** Following the Closing, Seller shall not engage in the business of providing potable water for sale.

**S. Perpetual Franchise.** Seller shall grant, contemporaneously with the Closing, to Purchaser, a perpetual and exclusive franchise to operate the potable water distribution and supply system within Seller's corporate boundaries. Such franchise shall be granted in accordance with the



terms and conditions of a Franchise Agreement in the form of Exhibit 1; provided, however, that Seller shall retain the right to revise such Franchise Agreement to include a franchise fee which will not exceed one percent (1%) of revenues received by Purchaser from water customers who are residents within Seller's corporate boundaries; and, provided further, that any such franchise fee would be collected by Purchaser and paid to Seller to establish a fund to be used to aid in the construction of water system infrastructure necessary for growth and expansion by Seller.

**T. Removal of Tiles.** Seller shall remove or have removed, prior to closing, all drain tiles which are not in compliance with Illinois Environmental Protection Regulation Agency regulations. Purchaser shall pay for such work and shall deduct the cost from the price to be paid Seller for the water assets. Should the transaction not close after Purchaser has paid for such work, Seller shall reimburse Purchaser within sixty (60) days of Purchaser's demand therefore.

#### **ARTICLE IV**

##### **WARRANTIES, REPRESENTATIONS, AND COVENANTS OF PURCHASER**

As an inducement to Seller to enter into this Agreement and to consummate the transactions contemplated hereby, Purchaser represents, warrants, and covenants to and with Seller that:

**A. Organization; Power.** Purchaser is a corporation duly organized, validly existing, and in good standing under the laws of the State of Illinois. Purchaser has all requisite corporate power and authority to own and operate Seller's Business and, upon receipt of approval from the Illinois Commerce Commission, to enter into this Agreement and to consummate the transactions contemplated hereby.

**B. Authority, No Violation, Etc.** The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby have been or will be duly and validly authorized by all necessary action on the part of the Board of Directors of Purchaser. This Agreement and the other agreements and documents contemplated hereby to which Purchaser is or shall be a party are valid and binding obligations of Purchaser, enforceable in accordance with their respective terms and conditions.

**C. Brokers' or Finders' Fees.** No agent, broker, investment banker, person, or firm acting on behalf of Purchaser or under Purchaser's authority is or will be entitled to any broker's or finder's fee or any other commission or similar fee directly or indirectly from any of the parties hereto in connection with any of the transactions contemplated hereby.

**D. Disclosure.** No representation or warranty by Purchaser contained in this Agreement and no statement contained in any certificate or other instrument delivered or to be delivered herewith or in connection with the transactions contemplated hereby by Purchaser contains or will contain any untrue statement of a material fact or omits or will omit to state a material fact necessary in order to make the statements contained herein or therein not misleading.

**E. Operation of System Acquired.** Purchaser shall operate the water system to be acquired from Seller pursuant hereto in accordance with Purchaser's high standards, as the largest public water utility in the State of Illinois and a member of the American Water System, in compliance with all EPA, ICC, and other applicable regulations, at rates approved by the Illinois Commerce Commission, from time to time.

**F. Compliance with Seller's Ordinances.** Following consummation of the transaction contemplated hereby, Purchaser shall comply with all reasonable and lawful ordinances established by Seller which affect Purchaser's provision of water utility service within Seller's corporate boundaries, provided, however, that no such ordinance shall be adopted by Seller which shall contradict the terms of the franchise granted to Purchaser pursuant to Article III, Section S.

## **ARTICLE V**

### **CONDUCT OF SELLER'S BUSINESS PRIOR TO CLOSING**

Between the date hereof and the Closing Date:

**A. Maintenance of Municipal Status.** Seller shall be maintained, at all times, as a municipal corporation validly existing and in good standing under the laws of the State of Illinois. Seller shall not merge, consolidate with, terminate its existence, nor sell any of the Water Properties (other than in the ordinary course of business) to any other person, firm, or organization, nor change the character of Seller's Business.

**B. Operation of Business.** Except as agreed in ARTICLE XIII, Seller and Purchaser as its agent shall operate Seller's business diligently and in the usual, regular, and ordinary manner only, and shall use its best efforts to (i) preserve its present potable water business intact, (ii) continue and preserve good relationships with its suppliers, customers, lenders, and others having business dealings with it, and (iii) maintain in full force and effect all licenses and permits required for the operation of Seller's Business as presently conducted. Seller shall not incur any liabilities after the date hereof other than in the ordinary course of its business nor make an addition to its physical plant with a cost in excess of Five Hundred Dollars (\$500.00), without first obtaining the consent and approval of Purchaser, which approval shall not be unreasonably withheld. No changes will be made or permitted to be made to the Water Properties except such as (i) are necessary to provide adequate public service in the regular and ordinary course of Seller's Business; (ii) are required by public authority and properly disclosed to Purchaser; or (iii) are consented to in writing by Purchaser.

**C. Access to Seller's Business.** Seller shall grant to Purchaser and its accountants, attorneys, engineers, and other authorized representatives, the right, during normal business hours, to enter upon its offices and plant sites in order to (i) inspect its records and business operations and to consult with its officers, employees, attorneys, and agents for the purpose of determining the accuracy of the representations and warranties made herein and the compliance with the covenants contained herein and (ii) examine the Water Properties and carry out any tests and examinations of the Water Properties necessary or desirable to allow Purchaser to determine the suitability of the

Water Properties for Purchaser's ultimate use; provided, however, that such tests and examinations are conducted in a manner which does not unreasonably interfere with the operation of Seller's Business.

**D. Fire or Casualty.** In the event that any assets to be conveyed hereunder should be damaged or destroyed as a result of fire, casualty, or other occurrence, no settlement shall be made with any insurance company and no decision with regard to restoration of any such assets shall be made without prior consultation with and approval by Purchaser, which approval shall not be unreasonably withheld.

**E. Satisfaction of Conditions Precedent.** Seller shall use its best efforts to satisfy, prior to the Closing Date, all of the conditions precedent under ARTICLE VI of this Agreement to Purchaser's obligation to purchase the Water Properties.

## **ARTICLE VI**

### **CONDITIONS PRECEDENT TO PURCHASER'S PERFORMANCE**

The obligation of Purchaser to purchase the Water Properties pursuant to the terms of this Agreement is subject to the satisfaction, at or prior to the Closing Date, of all the conditions of this ARTICLE VI. Purchaser may waive any or all of these conditions in whole or in part without prior notice; provided, however, that no such waiver of a condition shall constitute a waiver by Purchaser of any other condition.

**A. Covenants, Representations and Warranties of Seller.** Each of the covenants, representations and warranties of Seller contained in this Agreement shall be true and correct at and as of the Closing Date with the same force and effect as though made at and as of the Closing Date.

**B. Compliance.** Seller shall have performed and complied with all the covenants, agreements, obligations, and conditions required by this Agreement to be performed or complied with by it at or prior to the Closing Date.

**C. Proper Approval.** Seller shall have delivered to Purchaser copies of an ordinance properly adopted by Seller, certified to be true and complete and in full force and effect by the Village Clerk of Seller, authorizing the execution of this Agreement and the consummation of the transactions contemplated hereby.

**D. Consents and Approvals.** All consents, approvals, releases, orders, and authorizations of, and all registrations, qualifications, designations, declarations or filings with, any third parties, including, without limitation, parties to contracts, agreements, indentures, mortgages, licenses, permits, consent orders, and other instruments of Seller and any federal or state governmental authorities asserting jurisdiction over Seller or the Water Properties, necessary to the consummation by Seller of the sale of the Water Properties or the transactions contemplated by this Agreement, or necessary or appropriate to allow Purchaser to own the Water Properties or to conduct Seller's Business after the Closing Date, or otherwise pertaining to the matters covered by this Agreement, shall have been obtained by Seller and delivered to Purchaser.

E. **Deliveries by Seller.** Seller shall have delivered to Purchaser the documents and items specified in ARTICLE IX, Section B hereof.

F. **No Litigation.** No action, suit, nor proceeding shall have been instituted nor threatened against Seller before any court or governmental body or authority pertaining to the transaction contemplated by this Agreement.

G. **Schedule of Water Properties.** Seller shall have delivered to Purchaser, at least ten (10) business days prior to the Closing Date, a schedule (the "Water Properties Schedule") certified as true, correct, and complete by its Village Clerk, containing a listing of all personal property included in the Water Properties, along with true, correct, and complete copies of all the Contracts and Permits.

H. **Approval of Documents.** The form and substance of all certificates, instruments, and other documents delivered to Purchaser pursuant to this Agreement shall be satisfactory in all reasonable respects to Purchaser.

I. **Assets Not Affected Adversely.** The Water Properties shall not have been adversely affected in any way by fire, theft, casualty, or other cause, whether or not covered by insurance.

J. **Opinion of Counsel for Seller.** Purchaser shall have received from David Babb, Esq., counsel for Seller, a written opinion dated as of the Closing Date, addressed to Purchaser, that the existence of Seller as a municipal corporation is as stated in the preamble hereof; that Seller has the power to execute and deliver this Agreement and has been duly authorized pursuant to law to consummate the transaction hereunder contemplated; that this Agreement has been duly authorized, executed and delivered by Seller and is a valid and legally binding obligation of Seller, enforceable in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency, moratorium, or similar laws from time to time in effect which affect creditors' rights generally and by legal and equitable limitations on the availability of specific remedies; that Seller has good and marketable title to the Water Properties and that there is no lien, encumbrance or restriction of record upon said Water Properties except that certain pledge of revenues of said waterworks properties, the Water Properties, to the payment of the principal of and interest on bonds whose obligations will be extinguished at the Closing; and that the instruments executed and delivered to Purchaser hereunder are valid, binding and enforceable in accordance with their respective terms, and that such instruments effectively vest in Purchaser title to all of the Water Properties as contemplated by this Agreement and that the actions taken by Seller to effectively extinguish the obligation represented by the bonds which are secured by a lien on some or all of the Water Properties, will have effectively extinguished the obligation represented by such bonds, as of the Closing.

K. **Removal of Tiles.** Seller shall remove, prior to closing, all drain tiles which are not in compliance with Illinois Environmental Protection Regulation Agency regulations, at Seller's sole expense.

## **ARTICLE VII**

### **CONDITIONS PRECEDENT TO SELLER'S PERFORMANCE**

The obligations of Seller to sell the Water Properties pursuant to the terms of this Agreement are subject to the satisfaction, at or prior to the Closing Date, of all the conditions of this Article VII. Seller may waive any or all of these conditions in whole or in part without prior notice; provided, however, that no such waiver of a condition shall constitute a waiver by Seller of any other condition.

A. **Representations and Warranties of Purchaser.** Each of the representations and warranties of Purchaser contained in this Agreement shall be true and correct at and as of the Closing Date with the same force and effect as though made at and as of the Closing Date.

B. **Compliance.** Purchaser shall have performed and complied with all the covenants, agreements, obligations, and conditions required by this Agreement to be performed or complied with by it at or prior to the Closing Date.

C. **Corporate Approval.** Purchaser shall have delivered to Seller copies of corporate resolutions of Purchaser, certified to be true, complete, and in full force and effect by the corporate Secretary of Purchaser, authorizing the execution of this Agreement and the consummation of the transaction contemplated hereby.

D. **Consents and Approvals.** All consents, approvals, orders, and authorizations of, and all registrations, qualifications, designations, declarations, or filings with, any third parties and any federal or state governmental authorities asserting jurisdiction over Purchaser, necessary to the consummation by Purchaser of the purchase of the Water Properties or the transaction contemplated by this Agreement, or otherwise pertaining to the matters covered by this Agreement, including that of the Illinois Commerce Commission shall have been obtained by Purchaser and delivered to Seller.

E. **Deliveries by Purchaser.** Purchaser shall have delivered to Seller, by cash or certified or cashier's check, Three Hundred Ten Thousand Dollars (\$310,000.00), as adjusted in accordance with ARTICLE IX, Section D.

F. **Approval of Documents.** The form and substance of all certificates, instruments, and other documents delivered to Seller pursuant to this Agreement shall be satisfactory in all reasonable respects to Seller.

G. **No Litigation.** No action, suit, or proceeding shall have been instituted or threatened against Purchaser before any court or governmental body or authority pertaining to the transaction contemplated by this Agreement.

## **ARTICLE VIII**

### **TERMINATION**

A. **Termination by Mutual Agreement.** This Agreement may be terminated by the mutual agreement, in writing, of both of the parties hereto, at any time prior to the Closing Date.

B. **Termination by Purchaser.** This Agreement may be terminated by Purchaser at any time prior to the Closing, if Seller fails to perform any of its obligations, conditions, or covenants contained in this Agreement, or any representations or warranties of Seller contained in this Agreement are false or inaccurate in any material respect, any of the conditions to Purchaser's performance are not satisfied prior to the Closing Date, or the Water Properties Schedule, any disclosure thereon, or any of the Contracts or Permits shall be unsatisfactory to Purchaser, in its sole discretion, in which case Purchaser shall have no further obligations under this Agreement.

C. **Termination by Seller.** This Agreement may be terminated by Seller at any time prior to the Closing if Purchaser fails to perform any of its obligations, conditions, or covenants contained in this Agreement, any representations or warranties of Purchaser contained in this Agreement are false or inaccurate in any material respect, or any of the conditions to Seller's performance are not satisfied prior to the Closing Date, in which case Seller shall have no further obligations under this Agreement.

## **ARTICLE IX**

### **THE CLOSING**

A. **Time and Place.** The consummation of the transactions contemplated in this Agreement (the "Closing") shall be held at Saunemin Community Building, located at 70 North Street, Saunemin, IL 61769, on the fifteenth (15th) business day following approval of the transaction contemplated hereby by the Illinois Commerce Commission or at such other time and place as the parties may mutually agree upon in writing hereafter.

B. **Deliveries to Purchaser at the Closing.** At the Closing, and simultaneously with the deliveries to Seller specified in Section D, Seller shall deliver or cause to be delivered to Purchaser:

(1) A duly executed Bill of Sale with respect to the personal property included in the Water Properties in the form of Exhibit 3.

(2) Warranty Deeds conveying good and marketable title to all real property included within the Water Properties, subject only to (i) taxes and special assessments, if any, due and payable on or after the Closing Date; (ii) questions of survey, if any; (iii) building lines and building restrictions of record, if any; (iv) zoning and building laws and ordinances; and (v) streets, highways, rights of way, and existing easements of record, if any.

(3) Real Estate Transfer Declaration forms and disclosure forms as required by Illinois law.

(4) Assignments assigning all of the right, title, and interest of Seller in and to all Contracts and Permits described in Schedules 2 and 3 hereto and assumed by Purchaser and in and to all customer refundable advances for construction and customer meter deposits to be transferred hereunder in the form of Exhibit 4.

(5) A duly executed Franchise Agreement in the form of Exhibit 1.

(6) Any or all other documents or instruments of conveyance and transfer as Purchaser may reasonably request for the purpose of assigning, transferring, granting, and conveying title to the Water Properties to Purchaser.

C. **Possession.** Simultaneously with the deliveries specified in Section B hereof, Seller, through its officers, agents, and employees, shall put Purchaser into full possession and enjoyment of all of the Water Properties.

D. **Deliveries to Seller at Closing.** At the Closing, and simultaneously with the deliveries to Purchaser specified in Section B hereof, Purchaser shall deliver or cause to be delivered to Seller by cash, wire transfer, or a Company check, an amount equal to the Purchase Price, i.e. Three Hundred Ten Thousand Dollars (\$310,000.00), less the depreciated cost of any Water Properties rejected by Seller pursuant to ARTICLE III, Section J(2) and any applicable transfer taxes; and the amount owed to State Bank of Saunemin by Seller which shall be paid directly to the Bank.

E. **Final Meter Reading.** Seller and Purchaser shall, jointly, read all of Seller's customers' meters immediately prior to the Closing. All accounts receivable for the water utilized by such customers to the time of such reading shall be retained by Seller. Any water consumed by such customers after such reading shall be deemed water sold after the Closing and the revenue therefrom shall be Purchaser's.

## **ARTICLE X**

### **ADDITIONAL COVENANTS**

A. **Further Assurances.** Seller, after the Closing, shall execute, acknowledge, and deliver any further assignments, conveyances, and other assurances, documents, and instruments of transfer, reasonably requested by Purchaser, and will take any other action consistent with the terms of this Agreement that may reasonably be requested by Purchaser, for the purpose of assigning, transferring, granting, conveying, and confirming the Water Properties or any part of the Water Properties to Purchaser. If requested by Purchaser, Seller shall prosecute or otherwise enforce in its own name, for the benefit of Purchaser, any claims, rights, or benefits that are transferred to Purchaser by this Agreement that require prosecution and enforcement in Seller's name. Any prosecution or enforcement of claims, rights, or benefits under this ARTICLE X, Section A, shall be solely at Purchaser's expense, unless such prosecution or enforcement is made necessary by a breach of this Agreement by Seller.

B. **Cooperation.** The parties shall, from time to time after the Closing, upon the request of another party and without further consideration, execute, acknowledge, and deliver in proper form

any further instrument, and take such action as such other party may reasonably require, in order to effectively carry out the intent of this Agreement.

## **ARTICLE XI**

### **INDEMNIFICATION**

**A. Indemnification by Seller.** Seller shall indemnify, defend, and hold Purchaser harmless from and against all demands, suits, claims, actions or causes of action, assessments, losses, damages, liabilities, settlements, penalties, and forfeitures, and costs, and expenses incident thereto, including, but not limited to, attorneys' fees, legal expenses, consultants' fees, and court costs (collectively referred to as "Indemnity Losses" and individually as an "Indemnity Loss") asserted against, suffered, or incurred by Purchaser as a direct or indirect result of:

(1) any misrepresentation or omission in or breach of the representations and warranties of Seller, or the failure of Seller to perform any of its covenants or obligations contained in this Agreement or in any exhibit, schedule, certificate, or other instrument or document furnished or to be furnished by Seller pursuant hereto or in connection with the transaction contemplated hereby;

(2) any liabilities, obligations, or expenses of Seller which are not assumed by Purchaser under this Agreement, including, but not limited to, any claim arising from the operation of Seller's Business prior to the Closing Date.

(3) Any tax or related claim by any governmental authority with respect to the operations of Seller.

**B. Indemnification by Purchaser.** Purchaser shall indemnify, defend, and hold Seller harmless from and against any indemnity loss asserted against, suffered, or incurred by Seller as a direct or indirect result of:

(1) Any misrepresentation or omission in or breach of the representations and warranties of Purchaser or the failure of Purchaser to perform any of its covenants or obligations contained in this Agreement or in any exhibit, schedule, certificate or other instrument or document furnished or to be furnished by Purchaser pursuant hereto or in connection with the transactions contemplated hereby; or

(2) The use of the Water Properties subsequent to the Closing Date.

**C. Notice.** If an indemnified party believes that it has suffered or incurred any Indemnity Loss, it shall so notify the indemnifying party promptly, in writing, describing such loss or expense, the amount thereof, if known, and the method of computation of such loss or expense, all with reasonable particularity. If any action at law, suit in equity, or administrative action is instituted by or against a third party with respect to which an indemnified party intends to claim any liability or expense as an Indemnity Loss under this Section 11, it shall promptly notify the indemnifying party of such action or suit.



**D. Defense of Claims.** The indemnifying party shall have ten (10) days after receipt of either notice referred to in Section C hereof to notify the indemnified party that it elects to conduct and control any legal or administrative action or suit with respect to an indemnifiable claim. If the indemnifying party does not give the foregoing notice, the indemnified party shall have the right to defend, contest, settle, or compromise such action or suit in the exercise of its exclusive discretion, and the indemnifying party shall, upon request from the indemnified party, promptly pay the indemnified party in accordance with the other terms of this Article XI the amount of any Indemnity Loss resulting from its liability to the third party claimant. If the indemnifying party gives the foregoing notice, it shall have the right to undertake, conduct, and control, through counsel of its own choosing and at its sole expense, the conduct and settlement of such action or suit, and the indemnified party shall cooperate with the indemnifying party in connection therewith; provided, however, that (i) the indemnifying party shall not thereby permit to exist any lien, encumbrance, or other adverse charge securing the claims indemnified hereunder upon any asset of the indemnified party, (ii) the indemnifying party shall not thereby consent to the imposition of any injunction against the indemnified party without the written consent of the indemnified party, (iii) the indemnifying party shall permit the indemnified party to participate in such conduct or settlement through counsel chosen by the indemnified party and (iv) upon a final determination of such action or suit, the indemnifying party shall agree promptly to reimburse to the extent required under this Article XI the indemnified party for the full amount of any Indemnity Loss resulting from such action or suit and all reasonable and related expenses incurred by the indemnified party, except fees and expenses of counsel for the indemnified party incurred after the assumption of the conduct and control of such action or suit by the indemnifying party. So long as the indemnifying party is contesting any such action in good faith, the Indemnified Party shall not pay or settle any such action or suit. Notwithstanding the foregoing, the indemnified party shall have the right to pay or settle any such action or suit which is being contested by the indemnifying party in good faith, provided that in such event the indemnified party shall waive any right to indemnity therefor from the indemnifying party and no amount in respect thereto shall be claimed as an Indemnity Loss under this Article XI.

## **ARTICLE XII**

### **COMMISSION APPROVAL**

The consummation of the transaction contemplated by this Agreement is conditioned upon approval of the Illinois Commerce Commission. The parties shall use their best efforts to and cooperate in obtaining such approval, including the following steps and actions:

- (1) Purchaser shall, with all reasonable diligence and the cooperation of Seller:
  - (a) prepare such petitions and exhibits as may be required from time to time by the Illinois Commerce Commission in approving the consummation of this transaction and the execution of such conveyances as are contemplated hereby; and
  - (b) prosecute the request for approval of the consummation of the transaction contemplated hereby with the Illinois Commerce Commission.

(2) Seller will provide such testimony and assistance as may be proper and appropriate in appearing before the Illinois Commerce Commission for the purpose of obtaining approval.

(3) Seller shall not object to the issuance of a certificate of public convenience and necessity to Purchaser to allow Purchaser to provide water service in the area depicted on Exhibit 2.

### **ARTICLE XIII**

#### **OPERATION OF SELLER'S BUSINESS**

Notwithstanding anything else contained herein, should Seller request Purchaser to perform services necessary to operate Seller's business in the ordinary course prior to the Closing, Purchaser shall perform such services, as an independent contractor of Seller; provided, however, that Seller's obligations, as set forth herein, shall not be diminished, except as specifically assumed by Purchaser in performing such services. Seller shall reimburse Purchaser for all costs (including direct and indirect costs) incurred by Purchaser to perform such services.

### **ARTICLE XIV**

#### **MISCELLANEOUS PROVISIONS**

A. **Specific Performance.** Seller hereby acknowledges that it is impossible to measure in money the damages which will accrue to Purchaser by reason of a failure to perform Seller's obligations under this Agreement. Accordingly, at the option of Purchaser and in the event of a breach of any of the provisions hereof by Seller, Seller waives the claim or defense that Purchaser has or may have an adequate remedy at law, and Seller agrees that it will not urge in any such action or proceeding the claim or defense that such remedy at law exists.

B. **Confidential Nature of Information.** Each party hereto agrees that it will treat in confidence all documents, materials, and other information which it shall have obtained regarding any other party during the course of the negotiations leading to the consummation of the transactions contemplated herein (whether obtained before or after the date hereof), the investigation provided for herein, and the preparation of this Agreement and the other related documents, except as such disclosure may be required or beneficial for the prosecution of an application of approval of this Agreement before the Illinois Commerce Commission or any court having jurisdiction over such matters or agreed to by such other party.

C. **Expenses.** Each of the parties hereto shall pay all costs and expenses incurred or to be incurred by such party in negotiating and preparing this Agreement and in closing and carrying out the transactions contemplated by this Agreement, except as contemplated in ARTICLE III, Paragraph T.

D. **Headings.** The subject headings of the sections and articles of this Agreement are included for purposes of convenience only, and shall not affect the construction or interpretation of any of its provisions.

E. **Entire Agreement.** This Agreement constitutes the entire agreement among the parties pertaining to the subject matter contained in it and supersedes all prior and contemporaneous agreements, representations, and understandings of the parties, whether oral or written.

F. **Modification and Waiver.** No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing by both of the parties. No waiver of any of the provisions of this Agreement shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver.

G. **Counterparts.** This Agreement may be executed simultaneously in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

H. **Exhibits and Schedules.** All exhibits and schedules attached to this Agreement are incorporated herein and made a part hereof in the same manner as if such exhibits and schedules were set forth at length in the text hereof.

I. **Successors.** This Agreement shall be binding upon, and shall inure to the benefit of, the parties and their respective heirs, estates, successors, and assigns; provided, however, no party may assign or transfer any of its rights or obligations hereunder except with the prior written consent of the other party.

J. **Risk of Loss.** Any loss or damage from fire, theft, or other casualty or cause prior to the close of business on the Closing Date shall be the sole responsibility of Seller.

K. **Nature and Survival of Representations, Warranties, Agreements, and Indemnification.** All representations and warranties made by any party to this Agreement or pursuant hereto shall indefinitely survive the Closing Date, and they shall not be affected by any investigation made by or on behalf of any party to this Agreement.

L. **Negotiated Transaction.** The provisions of this Agreement were negotiated by the parties hereto and this Agreement shall be deemed to have been drafted by both the parties hereto.

M. **Notices.** All notices, requests, demands, and other communications required to be given under this Agreement shall be in writing and shall be deemed to have been duly given on the date of service if served personally on the party to whom notice is to be given, or on the day of receipt, if mailed to the party to whom notice is to be given by certified mail, return receipt requested, and properly addressed as follows:

If to Purchaser:

Illinois American Water  
Attn: David K. Baker  
201 Devonshire Drive  
Champaign, IL 61820

With a Copy to:

Illinois American Water  
Attn: Sue A. Schultz, Esq.  
300 N. Water Works Drive  
Belleville, IL 62223

If to Seller

Village of Saunemin  
Attn: Michael Stoecklin  
P. O. Box 283  
Saunemin, IL 61769

With a Copy to:

David Babb, Esq.  
303 West Madison Street  
Pontiac, IL 61764

N. **Governing Law.** This Agreement and all transactions contemplated hereby shall be governed, construed, and enforced in accordance with the laws of the State of Illinois.

**IN WITNESS WHEREOF**, the parties have executed this Agreement as of the day and year first above written.

**"SELLER"**

ATTEST:

By: Nancy J. Hang  
Secretary

VILLAGE OF SAUNEMIN

By: Michael Stoecklin  
Michael Stoecklin  
President - Board of Trustees

**"PURCHASER"**

ATTEST:

By: Sue A. Schultz  
Sue A. Schultz, Secretary

ILLINOIS AMERICAN WATER

By: T. L. Gloriod  
T. L. Gloriod, President

## SCHEDULE 1

### ALLOCATION OF PURCHASE PRICE

	<u>Price</u>
Real Estate	
1. Land and Land Rights	\$ 24,587.00
2. Structures and Improvements	119,236.00
3. Distribution Standpipe	1.00
Personal Property	
1. Pumping, Water Treatment, Distribution, and Other Equipment	166,171.00
2. Contracts	1.00
3. Permits	1.00
4. Inventory	0.00
5. Customer Lists and Records	1.00
6. Causes of Action	1.00
7. Goodwill	<u>1.00</u>
TOTAL:	<u>\$310,000.00</u>

**SCHEDULE 2**

**CONTRACTS**

**None**

### **SCHEDULE 3**

#### **PERMITS**

1. IEPA Operating Permit #0983-FY 2001 Saunemin Water Treatment Plant
2. IEPA Operating Permit #1443-FY 2000 Wells #7 & #8
3. NPDES Permit #IL0075299

**SCHEDULE 4**

**PLANT AND EQUIPMENT PURCHASED AFTER May 12, 2003**

INVOICE DATE	NAME	EXPLANATION	AMOUNT	DATE PAID	CHECK NO.
-----------------	------	-------------	--------	--------------	--------------

\$

Total

\$



**EXHIBIT 1**

**FRANCHISE AGREEMENT**

# DRAFT

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE AUTHORIZING ILLINOIS-AMERICAN WATER COMPANY TO USE THE PUBLIC WAYS AND OTHER PUBLIC PROPERTY IN CONJUNCTION WITH ITS CONSTRUCTION, OPERATION, AND MAINTENANCE OF THE POTABLE WATER DISTRIBUTION SYSTEM IN AND THROUGH THE VILLAGE OF SAUNEMIN, LIVINGSTON COUNTY, ILLINOIS.**

BE IT ORDAINED BY THE MAYOR AND THE VILLAGE COUNCIL OF THE VILLAGE OF SAUNEMIN, LIVINGSTON COUNTY, ILLINOIS, AS FOLLOWS:

SECTION ONE: In consideration of the covenants contained herein, and for other and further advantages accruing to the Village of Saunemin, hereinafter sometimes called the "Village", there is hereby given and granted to Illinois-American Water Company, a corporation organized and existing under and by virtue of the laws of the State of Illinois and a public utility as defined in the Illinois Public Utilities Act, 220 ILCS 5/1-101 et seq., its successors and assigns, hereinafter called the "Water Company", the right, privilege, authority, license, and permission to construct, install, operate, repair, replace, remove, and maintain in and through the Village a potable water supply and distribution system and to construct, install, operate, repair, replace, remove, and maintain all such facilities as may be necessary and convenient for such potable water system, in, upon, along, over, across, and under the public ways and public property in the Village, for a term of forty (40) years from and after the effective date of this Ordinance. Such potable water system shall be used, inter alia, for the purpose of supplying water in the Village for domestic, public, manufacturing, and other purposes, and to transport water through said Village to other municipalities and unincorporated areas where services may now or hereafter be furnished by means of the existing distribution system and transmission mains or as the same may be hereafter extended, enlarged, replaced, relocated, or paralleled by additional mains from time to time hereafter.

SECTION TWO: The Village hereby contracts with the Water Company to take from said company all water required for the extinguishment of fires and other municipal purposes for and during the term of this grant. The Village agrees to pay for all such water at the rates approved, from time to time, by the Illinois Commerce Commission ("Commission").

SECTION THREE: It is understood that the Village may request fire hydrants as deemed necessary for public fire protection and that installation of such hydrants and services requested by the Village or customers will be installed under the rules and regulations of the Water Company as now in effect and approved by the Illinois Commerce Commission and the regulations of the Illinois Environmental Protection Agency, or as such rules and regulations may be lawfully modified in the future.

SECTION FOUR: Upon the annexation of any territory to the Village, the portion of the Water Company's facilities that may be located within such annexed territory and in, under, or upon the streets, alleys, or public ways, shall thereafter be subject to all the terms of this franchise grant.

SECTION FIVE: The Village will not permit or allow the public fire hydrants erected in its streets and public right-of-ways to be used for any purpose other than extinguishments of fires, necessary and proper testing of its firefighting equipment, and necessary washing or flushing of sewers, and gutters; and the Village will take all necessary steps and adopt any ordinances which may appear needed to protect and afford protection to the property of the Water Company located within the Village. When water is used for any of such purposes, the approval of the fire chief of the Village for the use of the hydrant or hydrants shall first be obtained and the Water Company shall be notified of the time and place and the person employed by the Village who will be conducting each such use. For security reasons, no unauthorized person may use the hydrants for any purpose.

SECTION SIX: Should the Water Company cause an opening in any street or right-of-way within the Village during the operation of the water system, the Water Company will repair or replace the street or right-of-way at its expense and shall place the paving or other surface back in the same condition as prior to such opening as expediently as reasonably possible. The Water Company shall provide the Village with a list of all such openings which have been made in the prior calendar month no later than the tenth day of the immediately following month. The Village shall not adopt any ordinance or other fee schedule which would impose fees upon the Water Company for the privilege granted hereby of utilizing such streets and right-of-ways for the purposes of public water service.

SECTION SEVEN: No person or corporation shall be permitted, and the Village shall not grant to any person or corporation, the right to install, extend, or maintain any water, gas, telephone, sewer, or other system, or any pipes, mains, conduits, or wires, so as to injure, damage, or interfere with the water system, pipes, hydrants, or mains of the Water Company, nor shall the Village vacate away any rights-of-way containing Water Company facilities without the Water Company's prior approval or reservation of an easement providing a right to construct, operate, maintain, extend, or replace its facilities, nor shall any person or corporation be permitted or granted the right to interfere in any way with any of the rights granted hereunder to the Water Company to construct, operate, install, extend, maintain, or replace its water system or use the streets, avenues, alleys, parks, and other public places as provided herein.

SECTION EIGHT: The Village shall adopt no ordinances in conflict herewith.

SECTION NINE: The Water Company and the Village recognize that communication of planned improvements or maintenance of infrastructure is beneficial to the operations of each and to the residents of the Village and, to that end, shall meet at least once each year during the month of January to discuss their respective plans in order to coordinate, to the extent possible, any such construction activities. In

furtherance of communication during emergency situations, each party shall also provide to the other a list of contact telephone numbers or other contact information which will allow either party to contact a representative of the other 24 hours per day, 365 days per year.

SECTION TEN: Neither acceptance of, nor compliance with the provisions of this Ordinance, nor exercise of any right granted hereby, shall in any way impair or affect, or constitute or be construed as a relinquishment or waiver of, any right, permission or authority which the Water Company, its successors or assigns, may have independently of this Ordinance. Nor shall any use by the Water Company, its successors and assigns, of public property or places in the Village, as authorized by this Ordinance, or service rendered by the Water Company, its successors and assigns, in the Village, be treated as use solely of the rights, permission and authority provided for by the Ordinance or as service referable solely to this Ordinance or to any obligation of service consequent upon acceptance thereof or as in any way indicating non-use of, or non-compliance with any obligation incident to, any right, permission or authority vested in the Water Company, its successor or assigns, independently of this Ordinance; and the acceptance provided for at the conclusion of this Ordinance, and each and every compliance with the provisions of this Ordinance or with any obligation arising from acceptance thereof, shall be subject to, and conditioned by, the provision of this Section Nine, with the same force and effect as though each of the provisions of this Section were expressly incorporated in such acceptance and expressly declared by the acceptor, its successor or assign, at and prior to the time of such compliance by it, as conditions of such compliance.

SECTION ELEVEN: If any provision of this Ordinance, or the application of such provision to particular circumstances, shall be held invalid, the remainder of this Ordinance, or the application of such provision to circumstances other than those as to which it is held invalid, shall not be affected thereby.

SECTION TWELVE: The provisions herein constitute the complete agreement between the Village and the Water Company. All acts, ordinances, and parts of acts heretofore passed inconsistent with this Ordinance are hereby repealed.

SECTION THIRTEEN: This Ordinance shall become effective from and after its passage by the Village Council and the acceptance thereof by the Water Company; and when so passed and accepted, this Ordinance shall thereupon become and constitute a contract between the Water Company, its successors and assigns, and the Village of Saunemin, for the term herein provided.

PASSED AND APPROVED BY THE MAYOR AND THE VILLAGE COUNCIL OF THE VILLAGE OF SAUNEMIN, ILLINOIS, THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2003.

AYES: \_\_\_\_\_

NAYS: \_\_\_\_\_

ABSENT: \_\_\_\_\_

\_\_\_\_\_  
MAYOR

ATTEST:

\_\_\_\_\_  
VILLAGE CLERK

ACCEPTED BY ILLINOIS-AMERICAN WATER COMPANY THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2003.

ILLINOIS-AMERICAN WATER COMPANY

By: \_\_\_\_\_  
Vice President

ATTEST:

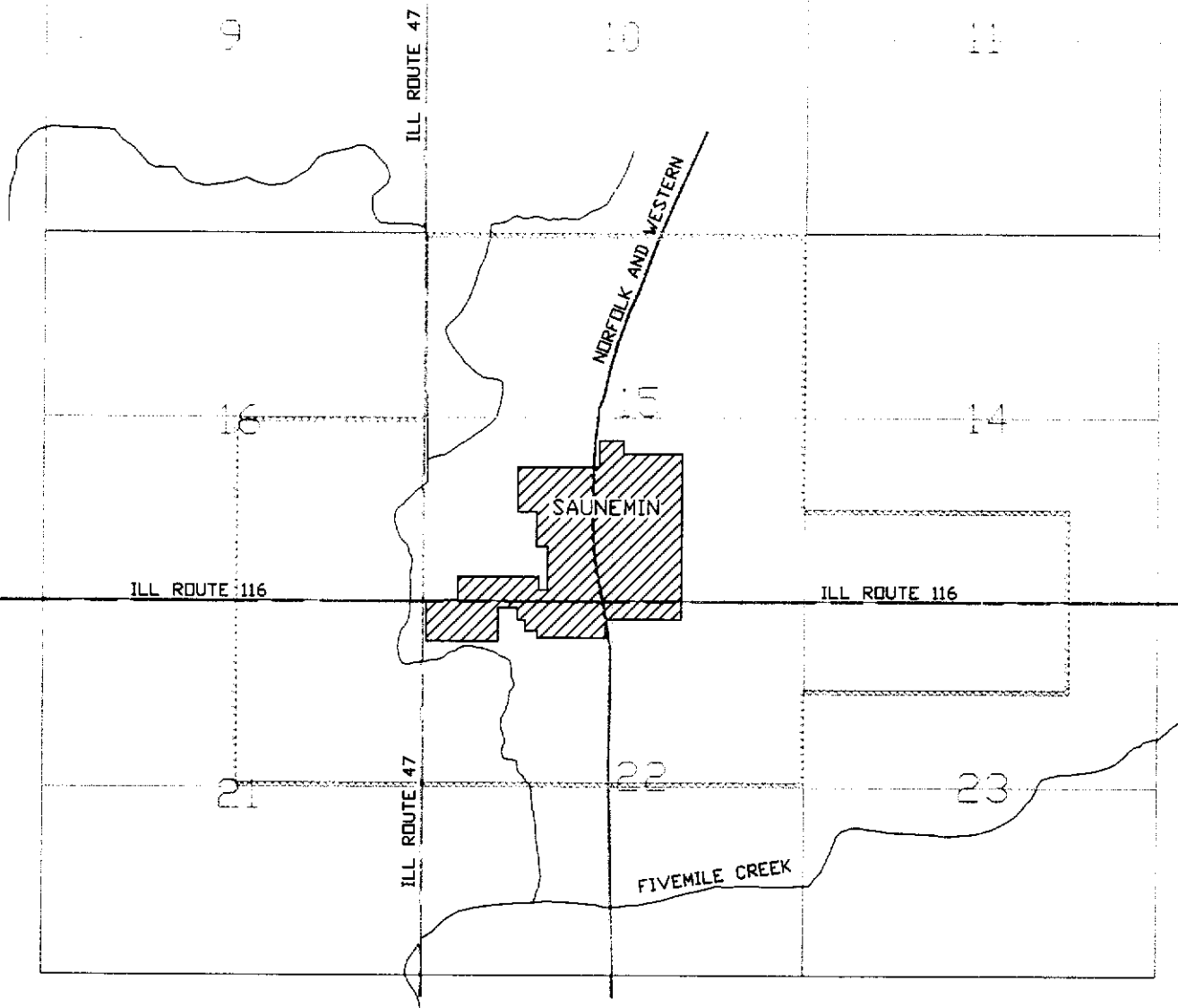
\_\_\_\_\_  
Secretary

EXHIBIT 2

**Proposed Area of Convenience and necessity for the Village of Suanemin  
Located in Livingston County, Illinois**

Township 28 North, Range 7 East of the Third Principal Meridian

Section 15;  
The Southeast  $\frac{1}{4}$  of Section 16;  
The Northeast  $\frac{1}{4}$  of Section 21;  
The North  $\frac{1}{2}$  of Section 22;  
The North  $\frac{1}{2}$  of the Northwest  $\frac{1}{4}$  of Section 23;  
The Northwest  $\frac{1}{4}$  of the Northeast  $\frac{1}{4}$  of Section 23;  
The South  $\frac{1}{2}$  of the Southwest  $\frac{1}{4}$  of Section 14;  
The Southwest  $\frac{1}{4}$  of the Southeast  $\frac{1}{4}$  of Section 14.



# INDEX

VILLAGE OF SAUNEMIN PROPOSED  
AREA OF CONVENIENCE AND NECESSITY

## ILLINOIS AMERICAN WATER VILLAGE OF SAUNEMIN AREA OF CONVENIENCE AND NECESSITY

REVISIONS



ILLINOIS AMERICAN WATER  
EASTERN DIVISION/PONTIAC DISTRICT

ENGINEERING DEPARTMENT  
CHAMPAIGN OFFICE  
201 DEVONSHIRE DR. CHAMPAIGN, IL 61820

DRAWN BY BEO  
PROJECT ENG'R BEO  
APPROVED

DATE 10-02-03  
PROJECT SUANEMIN

USE DIMENSIONS ONLY  
SCALE NONE

USE APPROVED DRAWINGS ONLY  
FOR CONSTRUCTION PURPOSES



### **EXHIBIT 3**

#### **BILL OF SALE**

This Bill of Sale is made this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by and between VILLAGE OF SAUNEMIN("Seller") and ILLINOIS-AMERICAN WATER COMPANY ("Purchaser").

#### **WITNESSETH:**

**WHEREAS**, pursuant to an Asset Purchase Agreement dated \_\_\_\_\_, 20\_\_ (the "Agreement") to which Seller and Purchaser are parties, Seller has agreed to sell to Purchaser Seller's Business and the Water Properties (as such terms are defined in the Agreement).

**NOW, THEREFORE**, Seller, pursuant to the Agreement, does hereby sell, assign, and transfer to Purchaser all of Seller's right, title, and interest in and to the following assets:

All of Seller's personal property, except that excluded by Article 1(B) of the Asset Purchase Agreement, comprising the water utility system of Seller or useful to it in supplying water to the public in Livingston County, Illinois (excluding all cash, accounts receivable, and unbilled revenues for water), legally or beneficially owned by Seller on the Closing Date, wheresoever located, whether carried on the books of Seller or not carried on the books of Seller due to having been expensed, fully depreciated, fully amortized or otherwise, including, but not limited to, the following:

- (i) All pumping and water treating equipment and machinery.
- (ii) All distribution equipment including elevated tank(s), mains, services, meters, and hydrants.
- (iii) All goodwill and customer lists and accounts.
- (iv) All inventories, raw materials, components, repair parts, work in process, and similar items, whether new or used, specifically including, but not limited to, all mains, pipe, hydrants, meters, and service lines not yet installed and all chemicals required or useful to the upkeep of the Water Properties or the rendering of water utility service.
- (v) All of Seller's rights, claims, and choses in action against third parties which are related to the assets described in subsections (i) through (iv).

- (vi) All rights in, to, and under all warranties and representations related to the assets described in subsections (i) through (v).
- (vii) All records relating to Seller's water utility business, including, but not limited to, all supplier lists, parts lists, manuals, files, computer programs, and any similar items related to the conduct of Seller's Business or the assets described in subsections (i) through (vi), excluding Seller's minute books.

Seller, for its successors and assigns, does hereby covenant with Purchaser that Seller and its successor and assigns will do, execute, and deliver, or will cause to be done, executed, and delivered, all such further acts, transfers, and assignments and conveyances as are necessary to consummate the sale, assignment, and transfer made to Purchaser hereby.

**IN WITNESS WHEREOF**, Seller has caused this Bill of Sale to be executed as of the day and year first above written.

**"SELLER"**

ATTEST:

VILLAGE OF SAUNEMIN

Nancy J. Haag  
City Clerk

By:

Michael Stoecklin  
Michael Stoecklin  
President – Board of Trustees

**EXHIBIT 4**


**ASSIGNMENT**

The undersigned, being duly authorized by and on behalf of the VILLAGE OF SAUNEMIN, ILLINOIS, hereby transfers, conveys, and assigns unto ILLINOIS-AMERICAN WATER COMPANY all of the right, title, and interest of the VILLAGE OF SAUNEMIN in and to the following described assets:

All franchises, indeterminate permits, grants, contracts, easements, and leases utilized in Seller's Business, as such term is defined in the Asset Purchase Agreement executed between the parties on \_\_\_\_\_, 20\_\_ which are assumed by Illinois-American Water Company, including, but not limited to, those described on Schedules 2 and 3 to the Asset Purchase Agreement which have been so assumed.

IN WITNESS WHEREOF, this Assignment has been made as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

VILLAGE OF SAUNEMIN

By:   
Michael Stoecklin  
President – Board of Trustees

ATTEST:

  
Nancy J. Haug  
City Clerk

**PUBLIC  
FIRE PROTECTION  
SERVICE AGREEMENT**

In consideration of the receipt of public fire protection service from Illinois-American Water Company ("Company"), consisting of the capacity, facilities, and water, as available, to meet its fire protection needs, the undersigned municipality or fire protection district agrees to pay an amount to be calculated in the manner designated below:

- ( ) 1. The monthly charge for a public fire hydrant contained in the Company's tariffs on file with the Illinois Commerce Commission, from time to time, (presently \$\_\_\_\_\_ per hydrant) multiplied by the number of public fire hydrants in the municipality or fire protection district during the month for which service is being billed; provided that, should a hydrant be added or removed, the charge for such hydrant shall be pro-rated, based upon the number of days that hydrant was in service during that month.
  
- ( ) 2. \$\_\_\_\_\_ per year multiplied by the number of public fire hydrants in the municipality or fire protection district during the year for which service is being billed; provided that, should a hydrant be added or removed, the charge for such hydrant shall be pro-rated, based upon the number of days that hydrant was in service during that year; and provided, further, that the Water Company's customers located within such municipality or district, pursuant to Section 9-223 of the Illinois Public Utilities Act, 220 ILCS 5/9-223 (the "Act"), shall pay the difference between the charge contained in the Company's tariff, from time to time, and the amount paid by the undersigned pursuant hereto through a tariff which will be imposed, from time to time, on such customers.
  
- ( x ) 3. No charge to the undersigned, except that the undersigned shall be required to pay the fire protection charge applicable to individual metered water service accounts of customers located within the municipality or fire protection district pursuant to the Act, if the municipality or district is itself a customer.

Notwithstanding the payment option elected above by the undersigned, should the Company not receive payment as contemplated above, service hereunder may be discontinued, at the Company's sole option, upon not less than five (5) days' advanced written notice to the undersigned.

The undersigned municipality or fire protection district agrees that future installations of public fire hydrants shall be governed by the Company's rules and regulations then on file with the Illinois Commerce Commission ("ICC").

This Agreement shall continue in full force and effect until the undersigned gives the Company six months' advanced written notice of a proposed change and the execution of a new agreement for fire protection service by the parties; provided, however, that if the Act is repealed or amended in any material respect, and the Company is receiving payment from its customers thereunder, this Agreement shall immediately become null and void.

This Agreement shall not become effective, until it has been accepted by the Company.

This Agreement is conditioned upon approval of the Illinois Commerce Commission.

IN WITNESS WHEREOF, this Agreement has been duly executed by the undersigned as of the 20<sup>TH</sup> day of OCTOBER, 2003.

SAUNEMIN FIRE PROTECTION DISTRICT

WITNESS:

[Signature]

By: Bill Carrole

Title: Mayor, Village of Saunemin

Title: Grantee

Accepted by Illinois-American Water Company:

Date: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_